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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/916,653	07/30/2001	Stephen R. Palm	1875.0080001	8494
26111	7590	10/04/2005	EXAMINER	
STERNE, KESSLER, GOLDSTEIN & FOX PLLC 1100 NEW YORK AVENUE, N.W. WASHINGTON, DC 20005			TSE, YOUNG TOI	
			ART UNIT	PAPER NUMBER
			2637	

DATE MAILED: 10/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/916,653

Applicant(s)

PALM, STEPHEN R.

Examiner

YOUNG T. TSE

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-56 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1 and 18 is/are allowed.
- 6) ☒ Claim(s) 3, 4, 7-15, 17, 20-28, 33-41 and 46-54 is/are rejected.
- 7) ☒ Claim(s) 2, 5-6, 16, 19, 29-32, 42-45 and 55-56 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments, see pages 14-16, filed March 17, 2005, with respect to claims 1-8, 11, 13-14, 16-21, 24, 26-27, 29-34, 37, 39-40, 42-47, 50, 52-53, and 55-56 have been fully considered and are persuasive. The rejection of claims 1-8, 11, 13-14, 16-21, 24, 26-27, 29-34, 37, 39-40, 42-47, 50, 52-53, and 55-56 has been withdrawn.

Claim Objections

2. Claims 2-4, 5-17, and 19-54 are objected to because of the following informalities:

In claim 2, line 2, "the upstream" should be "an upstream".

In claim 5, line 7, "over one" should be "over the one".

In claim 6, "kHz" should be "kHz". Also see claims 19, 32 and 45.

In claim 31, line 9, "a second signal" should be "a signal" since not first signal has been claimed. Also see claim 44.

Wherein claims 3-4, 7-17, 20-30, 33-43 and 46-54 depend upon claims 2, 5, 18, 31 and 44.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 3-4, 7-15, 17, 20-28, 33-41 and 46-54 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 3, line 1, "said capability indicator" lacks antecedent basis since it is unclear the modified or standard capability indicator.

Claim 7 lacks connection or cooperation with claims 5 and 6. Also see claims 20, 33, and 46.

In claim 9 (line 1), claim 10 (lines 1-2), claim 12 (lines 1-2), claim 15 (lines 1-2), claim 22 (line 1), claim 23 (lines 1-2), claim 25 (lines 1-2), claim 28 (lines 1-2), claim 35 (line 1), claim 36 (lines 1-2), claim 38 (lines 1-2), claim 41 (lines 1-2), claim 48 (line 1), claim 49 (lines 1-2), claim 51 (lines 1-2), and claim 54 (lines 1-2), the phrase "said initial upstream carrier" lacks antecedent basis.

The claimed subject matter of claim 13 has the conflict of claim 6. Also see claims 26, 39, and 52.

Wherein claims 4, 8, 11, 13-14, 17-19, 21, 24, 27, 29-32, 34, 37, 40, 47, 50, and 53 depend upon claims 3, 7, 20, 33 and 46.

Allowable Subject Matter

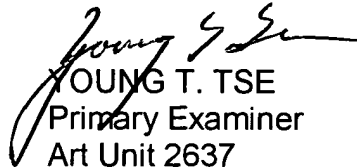
5. Claims 1 and 18 are allowed.
6. Claims 2, 5-6, 16, 19, 29-30, 31-32, 42-43, 44-45 and 55-56 would be allowable if rewritten or amended to overcome the objections set forth in this Office action.
7. Claims 3-4, 7-15, 17, 20-28, 33-41 and 46-54 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.
8. The following is a statement of reasons for the indication of allowable subject matter: the prior art fails to show or suggest a central modem configured to generate a modified capability indicator from a standard capability indicator, the modified capability indicator being used to indicate that said central modem is able to select a direction of transmission over one or more frequency bands available for use by the central modem and one or more remote modems able to recognize the modified capability indicator and in response, transmit a response signal over a carrier frequency selected from one of the one or more frequency bands available for use by said central modem.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to YOUNG T. TSE whose telephone number is (571) 272-3051. The examiner can normally be reached on Monday-Thursday and alternative Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jay Patel can be reached on (571) 272-2988. The Central FAX Number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


YOUNG T. TSE
Primary Examiner
Art Unit 2637